



General Assembly

## ***Amendment***

***February Session, 2018***

**LCO No. 5050**



Offered by:

REP. FLEISCHMANN, 18<sup>th</sup> Dist.

REP. COOK, 65<sup>th</sup> Dist.

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To: Subst. House Bill No. **5447**

File No. 256

Cal. No. 189

***"AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE  
AUDITORS OF PUBLIC ACCOUNTS CONCERNING PRIVATE  
PROVIDERS OF SPECIAL EDUCATION."***

1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

3 "Section 1. Section 10-91j of the 2018 supplement to the general  
4 statutes is repealed and the following is substituted in lieu thereof  
5 (*Effective July 1, 2018*):

6 (a) Any agreement entered into or amended on or after July 1, [2017]  
7 2018, but prior to June 30, 2019, or any contract entered into or  
8 amended on or after July 1, 2019, pursuant to section 10-76d, as  
9 amended by this act, between a local or regional board of education  
10 and a private provider of special education services, as defined in  
11 section 10-91g, as amended by this act, shall include an explanation of

12 how the tuition or costs for services provided under the agreement or  
13 contract are to be calculated. Any such agreement or contract may  
14 include the following provisions: (1) A requirement that such private  
15 provider of special education services submit monthly or quarterly  
16 reports to such board regarding the specific services and frequency of  
17 such services being provided by such private provider of special  
18 education services to students under the agreement ~~or contract~~, and (2)  
19 authorization for such board to (A) review and reconcile such reports  
20 to the contracted services described in the agreement ~~or contract~~, or (B)  
21 conduct periodic site visits at the location where such private provider  
22 of special education services provides services.

23 (b) On and after July 1, 2019, a local or regional board of education  
24 shall not be eligible for reimbursement pursuant to section 10-76g for  
25 any costs of special education paid by such board of education to a  
26 private provider of special education services unless such board of  
27 education has entered into a written contract with such private  
28 provider of special education services for the provision of such special  
29 education services. The individualized education program of a child  
30 shall not be considered a contract between a local or regional board of  
31 education and a private provider of special education services for  
32 purposes of this section. Nothing in this subsection shall be construed  
33 to limit or interrupt the provision of special education and related  
34 services to a child by a local or regional board of education or private  
35 provider of special education services.

36 Sec. 2. Subsection (b) of section 10-91h of the 2018 supplement to the  
37 general statutes is repealed and the following is substituted in lieu  
38 thereof (*Effective July 1, 2018*):

39 (b) Each local and regional board of education that has entered into  
40 an agreement or contract pursuant to section 10-76d, as amended by  
41 this act, or 10-91j, as amended by this act, with a private provider of  
42 special education services, shall submit to an audit conducted by the  
43 Auditors of Public Accounts for the purposes of examining such  
44 board's monitoring of student attendance at such private provider of

45 special education services to ensure that proper services are being  
46 provided and costs are being controlled. Such board shall provide  
47 access to all records and accounts necessary to said auditors for  
48 purposes of conducting such audit.

49 Sec. 3. Section 10-91g of the 2018 supplement to the general statutes  
50 is repealed and the following is substituted in lieu thereof (*Effective July*  
51 *1, 2018*):

52 (a) As used in this section, ~~[and] sections 10-91h [and 10-91i] to 10-~~  
53 ~~91j, inclusive, as amended by this act, and sections 4 and 5 of this act,~~  
54 "private provider of special education services" means any private  
55 school or private agency or institution, including a group home, that  
56 receives any state or local funds as a result of providing special  
57 education services to any student with an individualized education  
58 program or for whom an individual services plan has been written by  
59 the local or regional board of education responsible for educating such  
60 student.

61 (b) In accomplishing their duties as set forth in section 7-396a and in  
62 accordance with the authority granted under chapter 111, the Auditors  
63 of Public Accounts shall act as an agent of a local or regional board of  
64 education for the purposes of conducting an audit to examine the  
65 records and accounts of any private provider of special education  
66 services that (1) has entered into an agreement or contract with a local  
67 or regional board of education, pursuant to section 10-76d, as amended  
68 by this act, or 10-91j, as amended by this act, or (2) receives any state or  
69 local funds to provide special education and related services, in  
70 connection with any grant made by any state agency pursuant to any  
71 section of the general statutes or any public or special act. Such  
72 examination shall include a compliance audit of whether such state or  
73 local funds to provide special education and related services have been  
74 expended for allowable costs, in accordance with state and federal law  
75 and the individualized education program or individual services plan  
76 for each child receiving special education and related services from  
77 such private provider of special education services.

78 (c) The Auditors of Public Accounts shall conduct the audit  
79 described in subsection (b) of this section as follows: (1) The Auditors  
80 of Public Accounts, using a risk-based approach, shall audit private  
81 providers of special education services at a frequency that they deem  
82 necessary, except that no private provider of special education services  
83 shall have its records and accounts so examined more than once  
84 during such five-year period, unless the auditors have found a  
85 problem with the records and accounts of such private provider of  
86 special education services during such five-year period; (2) audits shall  
87 be of private providers of special education services approved by the  
88 Department of Education and of private providers of special education  
89 services not approved by the Department of Education; and (3) priority  
90 of conducting such audits, as practical, shall be given to those private  
91 providers of special education services (A) that receive the greatest  
92 total amount of state or local funds for the provision of special  
93 education services to students, (B) that provide special education  
94 services to the highest number of students for whom an individual  
95 services plan has been written by a local or regional board of  
96 education, and (C) that have a highest proportion of state and local  
97 funds for the provision of special education services in relation to their  
98 total operational expenses.

99 (d) The Auditors of Public Accounts may (1) consult the Department  
100 of Education during the course of an audit described in subsection (b)  
101 of this section for the purposes of conducting such audit, and (2) share  
102 any preliminary audit findings with the department.

103 (e) The Auditors of Public Accounts shall report their findings to (1)  
104 the local or regional board of education that has entered into an  
105 agreement or contract with the private provider of special education  
106 services, pursuant to section 10-76d, as amended by this act, or 10-91j,  
107 as amended by this act, or that has completed an individualized  
108 education program or individual services plan for a student receiving  
109 special education and related services from a private provider of  
110 special education services, (2) the Commissioner of Education, and (3)  
111 the joint standing committee of the General Assembly having

112 cognizance of matters relating to education, in accordance with the  
113 provisions of section 11-4a.

114       Sec. 4. (NEW) (*Effective July 1, 2018*) The Department of Education  
115 shall develop standards and a process for the documentation of the  
116 provision of special education services by a private provider of special  
117 education services. Such standards and process shall include the use of  
118 standard forms or other electronic reporting systems that can be used  
119 by a private provider of special education services, provided such  
120 standard forms or other electronic reporting systems allow a private  
121 provider of special education services to (1) document the scope and  
122 type of services provided to an individual student on a daily, weekly  
123 and monthly basis, (2) record the number of such services provided on  
124 a daily, weekly and monthly basis, and (3) include, but need not be  
125 limited to, the name of the student receiving services, the service being  
126 provided to the student, the date such service was provided, the length  
127 of time such service was provided and the name and signature of the  
128 person providing such service. In developing such standards and  
129 process, the department shall consult with private providers of special  
130 education services.

131       Sec. 5. (NEW) (*Effective July 1, 2018*) Whenever any child is identified  
132 by a local or regional board of education as a child requiring special  
133 education and said board of education determines that the  
134 requirements for special education could be met by a program  
135 provided by an agreement or a contract with a private provider of  
136 special education services, except for the child's need for services other  
137 than educational services such as medical, psychiatric or institutional  
138 care or services, such private provider of special education services  
139 shall submit its operating budget to the Department of Education on or  
140 before October first of the school year in which such private provider  
141 of special education services is providing such program, except that  
142 such private provider of special education services shall not be  
143 required to submit its operating budget more than once in a single  
144 school year.

145 Sec. 6. Subsection (d) of section 10-76d of the 2018 supplement to the  
146 general statutes is repealed and the following is substituted in lieu  
147 thereof (*Effective July 1, 2018*):

148 (d) To meet its obligations under sections 10-76a to 10-76g, inclusive,  
149 any local or regional board of education may make agreements with  
150 another such board or subject to the consent of the parent or guardian  
151 of any child affected thereby, make agreements, or on and after July 1,  
152 2019, enter into a contract with any private provider of special  
153 education services, as defined in section 10-91g, as amended by this  
154 act, private school, or [with any] public or private agency or  
155 institution, including a group home to provide the necessary programs  
156 or services, but no expenditures made pursuant to a contract with a  
157 private provider of special education services, private school, agency  
158 or institution for such special education shall be paid under the  
159 provisions of section 10-76g, unless (1) such contract includes a  
160 description of the educational program and other treatment the child is  
161 to receive, a statement of minimal goals and objectives which it is  
162 anticipated such child will achieve, [and] an estimated time schedule  
163 for returning the child to the community or transferring such child to  
164 another appropriate facility, and an explanation of how the tuition or  
165 costs for services provided under the agreement or contract are to be  
166 calculated, (2) subject to the provisions of this subsection, the  
167 educational needs of the child for whom such special education is  
168 being provided cannot be met by public school arrangements in the  
169 opinion of the commissioner who, before granting approval of such  
170 contract for purposes of payment, shall consider such factors as the  
171 particular needs of the child, the appropriateness and efficacy of the  
172 program offered by such private school, agency or institution, and the  
173 economic feasibility of comparable alternatives, and (3) commencing  
174 with the 1987-1988 school year and for each school year thereafter,  
175 each such private provider of special education services, private  
176 school, agency or institution has been approved for special education  
177 by the Commissioner of Education or by the appropriate agency for  
178 facilities located out of state, except as provided in subsection (b) of

179 this section. Notwithstanding the provisions of subdivision (2) of this  
180 subsection or any regulations adopted by the State Board of Education  
181 setting placement priorities, placements pursuant to this section and  
182 payments under section 10-76g may be made pursuant to such a  
183 contract if the public arrangements are more costly than the private  
184 provider of special education services, private school, institution or  
185 agency, provided the private provider of special education services,  
186 private school, institution or agency meets the educational needs of the  
187 child and its program is appropriate and efficacious. Notwithstanding  
188 the provisions of this subsection to the contrary, nothing in this  
189 subsection shall (A) require the removal of a child from a nonapproved  
190 facility if the child was placed there prior to July 7, 1987, pursuant to  
191 the determination of a planning and placement team that such a  
192 placement was appropriate and such placement was approved by the  
193 Commissioner of Education, or (B) prohibit the placement of a child at  
194 a nonapproved facility if a planning and placement team determines  
195 prior to July 7, 1987, that the child be placed in a nonapproved facility  
196 for the 1987-1988 school year. Each child placed in a nonapproved  
197 facility as described in subparagraphs (A) and (B) of subdivision (3) of  
198 this subsection may continue at the facility provided the planning and  
199 placement team or hearing officer appointed pursuant to section 10-  
200 76h determines that the placement is appropriate. Expenditures  
201 incurred by any local or regional board of education to maintain  
202 children in nonapproved facilities as described in said subparagraphs  
203 (A) and (B) shall be paid pursuant to the provisions of section 10-76g.  
204 Any local or regional board of education may enter into a contract with  
205 the owners or operators of any sheltered workshop or rehabilitation  
206 center for provision of an education occupational training program for  
207 children requiring special education who are at least sixteen years of  
208 age, provided such workshop or institution shall have been approved  
209 by the appropriate state agency. Whenever any child is identified by a  
210 local or regional board of education as a child requiring special  
211 education and such board of education determines that the  
212 requirements for special education could be met by a program  
213 provided within the district or by agreement with another board of

214 education except for the child's need for services other than  
 215 educational services such as medical, psychiatric or institutional care  
 216 or services, such board of education may meet its obligation to furnish  
 217 special education for such child by paying the reasonable cost of  
 218 special education instruction in a private provider of special education  
 219 services, private school, hospital or other institution provided such  
 220 board of education or the commissioner concurs that placement in  
 221 such institution is necessary and proper and no state institution is  
 222 available to meet such child's needs. Any such private provider of  
 223 special education services, private school, hospital or other institution  
 224 receiving such reasonable cost of special education instruction by such  
 225 board of education shall submit all required documentation to such  
 226 board of education for purposes of submitting claims to the Medicaid  
 227 School Based Child Health Program administered by the Department  
 228 of Social Services."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2018</i>	10-91j
Sec. 2	<i>July 1, 2018</i>	10-91h(b)
Sec. 3	<i>July 1, 2018</i>	10-91g
Sec. 4	<i>July 1, 2018</i>	New section
Sec. 5	<i>July 1, 2018</i>	New section
Sec. 6	<i>July 1, 2018</i>	10-76d(d)